

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHY O'BRIEN,

Plaintiff-Appellant,

v

DEAN O'BRIEN,

Defendant-Appellee.

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UNPUBLISHED

September 11, 2007

No. 271625

Huron Circuit Court

LC No. 06-003046-DO

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Plaintiff claims an appeal from a judgment of divorce. Specifically, plaintiff challenges the trial court's decision that she be required to pay costs and fees as a prerequisite to entry of the judgment. We remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint for divorce. She also filed an affidavit indicating that she received public assistance, and requesting that costs and fees be suspended. The trial court suspended costs and fees until further order.

Plaintiff thereafter moved for entry of judgment. At a hearing on the motion, plaintiff testified that she received public assistance in the form of food stamps, and that, to the best of her knowledge, defendant also received food stamps. Plaintiff requested that the trial court waive costs and fees. The trial court declined to waive costs and fees, and required plaintiff to pay applicable costs and fees as a prerequisite to entry of the judgment. The trial court gave no reason for its decision.<sup>1</sup>

"[T]he rules governing statutory interpretation apply equally to the interpretation of court rules." *Castillo v Exclusive Builders, Inc*, 273 Mich App 489, 492; 733 NW2d 62 (2007). If the

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<sup>1</sup> The trial court's register of actions indicates that plaintiff paid the filing fee of \$150 several days after entry of the judgment of divorce. The judgment of divorce contains a provision requiring defendant to pay costs and fees associated with the action; plaintiff makes no reference to this provision.

plain meaning of the language of the court rule is clear, then judicial construction is neither necessary nor permitted. The interpretation of a court rule presents a question of law that we review de novo. *Id.*

MCR 2.002 provides in pertinent part:

(C) Persons Receiving Public Assistance. If a party shows by ex parte affidavit or otherwise that he or she is receiving any form of public assistance, the payment of fees and costs as to that party shall be suspended.

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(E) Domestic Relations Cases; Payment of Fees and Costs by Spouse.

(1) In an action for divorce, separate maintenance, or annulment or affirmation of marriage, the court shall order suspension of payment of fees and costs required to be paid by a party and order that they be paid by the spouse, if that party

(a) is qualified for a waiver or suspension of fees and costs under subrule (C) or (D), and

(b) is entitled to an order requiring the spouse to pay attorney fees.

(2) If the spouse is entitled to have the fees and costs waived or suspended under subrule (C) or (D), the fees and costs are waived or suspended for the spouse.

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(G) Reinstatement of Requirement for Payment of Fees and Costs. If the payment of fees or costs has been waived or suspended under this rule, the court may on its own initiative order the person for whom the fees or costs were waived or suspended to pay those fees or costs when the reason for the waiver or suspension no longer exists.

Plaintiff argues that the trial court erred in applying MCR 2.002 and denied her due process by requiring her to pay costs and fees as a prerequisite to entry of the judgment of divorce. We agree.

We remand this case with instructions that the trial court reconsider its decision to require plaintiff to pay costs and fees. MCR 2.002(C), which provides that costs and fees “shall”<sup>2</sup> be suspended upon a party’s showing that he or she receives public assistance, creates a

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<sup>2</sup> “The word ‘shall’ is unambiguous and is used to denote mandatory, rather than discretionary, action.” *STC, Inc v Dep’t of Treasury*, 257 Mich App 528, 537; 669 NW2d 594 (2003).

presumption of indigency. *Meece v Meece*, 223 Mich App 344, 347; 566 NW2d 310 (1997). Thus, the trial court properly suspended costs and fees upon plaintiff's filing of her complaint and an affidavit of indigency.

MCR 2.002(G) provides that if costs and fees have been suspended, the trial court "may"<sup>3</sup> order payment of those costs and fees "when the reason for the waiver or suspension no longer exists." Plaintiff testified at the hearing on the motion for entry of judgment that she continued to receive public assistance. No evidence was presented to negate the presumption of indigency. In the absence of such evidence, the trial court abused its discretion by requiring plaintiff to pay costs and fees as a prerequisite to entry of the judgment. See *Meece*, *supra* at 347.

We remand this case with instructions that the trial court determine whether plaintiff is financially able to pay costs and fees, MCR 2.002(G), whether defendant should be required to pay costs and fees, MCR 2.002(E), or whether payment of costs and fees should be waived altogether. The trial court shall enter an appropriate order reflecting its decision.

Remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Pat M. Donofrio  
/s/ Deborah A. Servitto

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<sup>3</sup> The word "may" designates discretion. *Old Kent Bank v Kal Kustom Enterprises*, 255 Mich App 524, 532; 660 NW2d 384 (2003).